

SB 155



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

Thursday, February 24, 2011
9:00 a.m.

WRITTEN COMMENTS

**TESTIMONY ON SENATE BILL NO. 155, S.D. 1, RELATING TO ATHLETIC
TRAINERS.**

TO THE HONORABLE DAVID Y. IGE, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Celia Suzuki, Acting Licensing Administrator for the Professional and Vocational Licensing Division ("Division"), Department of Commerce and Consumer Affairs ("DCCA"). The Division appreciates the opportunity to present testimony on Senate Bill No. 155, S.D. 1, Relating to Athletic Trainers.

The bill proposes to regulate the practice of athletic training by requiring athletic trainers to be registered with the DCCA. On the matter of whether to regulate this new profession, we oppose this proposal as it is contrary to the recommendations of the

Auditor's analysis which was completed in 2010. The sunrise study suggested that regulation and registration of athletic trainers is not warranted.

The Regulated Industries Complaints Office also has concerns about the bill as it lacks key provisions for a regulatory law and as is written, would be difficult to implement and enforce.

However, should this proposal advance in the Legislature, we would like to mention that the athletic trainers will bear the burden of subsidizing the program through fees, the cost of the DCCA's resources to start-up, implement, and maintain this new program. We have attached a Proposed S.D. 2 for your Committee's consideration. The Proposed S.D. 2 contains placeholder provisions relating to additional manpower and funding that the department foresees it will need should the bill pass for DCCA to implement.

This bill also provides that this act shall take effect on August 1, 2011. We request that should this bill pass, the effective date be that of July 1, 2012, to allow us sufficient time to ensure a smooth and efficient transition for the regulation of athletic trainers. A one year delayed effective date has been consistently supported by the Legislature.

Thank you for the opportunity to testify on Senate Bill No. 155, S.D. 1.

A BILL FOR AN ACT

RELATING TO ATHLETIC TRAINERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 3. ~~[This Act shall take effect on August 1, 2011,~~
2 ~~provided that this Act shall be repealed on July 31, 2017.]~~
3 "**S26H-4 Repeal dates for newly enacted professional and**
4 **vocational regulatory programs. (a)** Any professional or
5 vocational regulatory program enacted after January 1, 1994, and
6 listed in this section shall be repealed as specified in this
7 section. The auditor shall perform an evaluation of the
8 program, pursuant to section 26H-5, prior to its repeal date.
9 **(b) Chapter (athletic trainers) shall be repealed on**
10 **June 30, 2018.**"

11 SECTION 4. The department of commerce and consumer
12 affairs may employ necessary personnel without regard to chapter
13 76, Hawaii Revised Statutes, to assist with the implementation
14 and continuing functions of this chapter.

15 SECTION 5. Upon the issuance of a new registration and at
16 each registration renewal period, each athletic trainer shall be
17 an additional fee (surcharge) of \$_____, which shall be

1 maintained in a separate account within the compliance
2 resolution fund established pursuant to section 26-9(o), Hawaii
3 Revised Statutes. At the end of each quarter, the moneys
4 contained in the separate account established pursuant to this
5 section shall be transferred to the compliance resolution fund
6 until such time that the total transferred amounts equal to the
7 amount appropriated in section 6 of this Act. Thereafter, no
8 surcharge shall be assessed, and any funds in excess of the
9 amount appropriated in section 6 of this Act shall be deposited
10 in the compliance resolution fund.

11 Section 6. There is appropriated out of the compliance
12 resolution fund established pursuant to section 26-9(o), Hawaii
13 Revised Statutes, the sum of \$40,000, or so much thereof as may
14 be necessary for fiscal year 2011-2012, to implement the
15 athletic trainers registration program.

16 The sum appropriated shall be expended by the department of
17 commerce and consumer affairs for the purposes of this Act.

18 Section 7. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 Section 8. This Act shall take effect on July 1, 2012;
21 provided that section 4 of this Act shall take effect on

1 approval; and provided further that section 6 of this Act shall
2 take effect on July 1, 2011.

3

Report Title:

Athletic Trainers; Registration

Description:

Creates registration requirements and qualifications for athletic trainers in this State; provides exemptions; prescribes penalties. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON
WAYS AND MEANS

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2011

THURSDAY, FEBRUARY 24, 2011
9:00 A.M.

WRITTEN TESTIMONY ONLY
ON SENATE BILL NO. 155 S.D.1
RELATING TO ATHLETIC TRAINERS

TO THE HONORABLE DAVID Y. IGE, CHAIR,
AND THE HONORABLE MICHELLE KIDANI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 155 S.D.1, Relating to Athletic Trainers. My name is Jo Ann Uchida of the Department's Regulated Industries Complaints Office ("RICO"). RICO does not support this bill in its current form and offers the following comments.

1) Practice of medicine; supervisory responsibility of treating physician.

"Practice of athletic training" as set forth in this bill appears to fall within the

definition of the practice of medicine under Chapter 453, Hawaii Revised Statutes ("HRS"). RICO is concerned that the bill as drafted would trigger possible unlicensed practice of medicine violations.

Also, the bill appears to provide for the participation of a treating physician who would supervise the athletic trainer. However, the bill does not have an affirmative statement that the athletic trainer may render treatment only under the direction of a treating physician. From an enforcement perspective, it would be difficult to take enforcement action if the relative responsibilities of the athletic trainer and the treating physician are not set forth in the respective licensing laws.

2) Civil penalties. The civil penalties referred to in section 8 of this bill (§436B-26.5, HRS) apply to situations in which unlicensed activity has occurred. Penalties should not be limited only to situations involving unlicensed activity.

3) Standards of Ethics. It appears that the National Athletic Trainers' Association has adopted a Code of Ethics, and the Board of Certification, Inc., has adopted a separate Standards of Professional Practice that includes practice standards and a Code of Professional Responsibility. Senate Bill No. 155 S.D.1 does not identify the standards of ethics that would be applied to registrants.

4) The bill as drafted regulates conduct that has the potential of generating complaints. It is foreseeable that persons with information relating to possible violations will be limited by applicable state or federal educational, employment, or health privacy laws from disclosing information that may be relevant to an

Testimony on Senate Bill No. 155 S.D.1
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investigation. RICO recommends that the bill clarify the Department's authority to access otherwise protected information.

Thank you for this opportunity to testify on Senate Bill No. 155 S.D.1. I will be happy to answer any questions that the members of the Committee may have.

Testimony by:
Ann Frost, PT
SB 155sd1, Relating to Athletic Trainers
Sen WAM, Thurs, Feb. 24, 2011
Room 211, 9:00 am



Position: Support Intent, Amendments Offered

Chair Ige and Members of the Sen WAM Committee:

I am Ann Frost, P.T., President of the Hawaii Chapter – American Physical Therapy Association (HAPTA) and member of HAPTA’s Legislative Committee. HAPTA represents 1400 physical therapists and physical therapist assistants employed in hospitals, nursing homes, the Armed Forces, the Department of Education and Department of Health (DOH) systems, and private clinics throughout our community. Physical therapists work with everyone, from infants to the elderly, to restore and improve function and quality of life. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Physical therapy services are a vital part of restoring optimum function from neuromusculoskeletal injuries and impairments, improving wellness, and teaching prevention.

HAPTA supports the intent of SB155sd1 and appreciates the inclusion of definitions for “athlete” and “athletic injury”. These definitions recognize the specific population that certified athletic trainers are educated and trained to work with, primarily people who are preparing for or participating in competitive sports activities. While this may seem superfluous, it is necessary since without the definition of what they treat, there may be lack of understanding of their scope of practice. Since they have clearly indicated on a national level that they intend to expand their scope of practice, and because their current educational requirements prepare them to treat only athletes with athletic injuries, this language will help protect the public.

We offer the following amendments that will provide consumers further assurances that certified athletic trainers are practicing within their education and training parameters:

1. Page 1, lines 13 -17: “...Regulation of athletic trainers will ensure that participants in athletic activities receive prompt, specialized emergency care as well as appropriate follow-up treatment and rehabilitation and meet appropriate criteria before being returned to play.”

Page 4, lines 8: “(4) Rehabilitate, and recondition athletic injuries;

Recommendation: Remove “rehabilitation” from page 1, lines 13-17 and “rehabilitate” from page 4, lines 8. Athletic trainers treat and recondition athletic injuries. Rehabilitation is the province of physical therapists, occupational therapists, and speech therapists and encompasses a much broader scope of practice, a broader patient population, and a broader knowledge and skill set than is involved in treating athletic injuries. Although UH Hawaii does have an athletic training program which culminates in a master's degree, many athletic trainers have gained their certification by acquiring a bachelor's degree in any number of programs including kinesiology and exercise science--but not necessarily athletic training--, doing their requisite field time, and passing the national certification exam. Thus the use of the word "rehabilitate" does not accurately describe what they do.

2. Page 9, 9 -15: “...In the granting of permission to engage in the practice of athletic training, and consistent with the intent of chapter 436B, the definition of “license” under section 426B-2 is inclusive of a registration issued under this chapter; therefore, an athletic trainer who is registered under this chapter shall be regarded as an athletic trainer who holds license to practice the profession of athletic training.”

Recommendation: Remove language that states athletic trainer registration is equivalent to licensure, “..therefore, an athletic trainer who is registered under this chapter shall be regarded as an athletic trainer who holds license to practice the profession of athletic training.” The primary purpose of this language is to seek

third party reimbursement. Removal of that language helps ensure that this bill is in fact an effort to protect consumers rather than an endorsement of attempts to seek reimbursement.

3. **Recommendation:** Insert HB 337hd1 language to page 8, lines 20- to page 9 X. HB 337hd1 language makes clear that pursuit of athletic trainer registration is consumer protection focused and is not a vehicle to seek insurance reimbursement.

“Section X – 9: Prohibition against third party insurance reimbursement. Nothing in this chapter shall be construed as allowing athletic trainers to seek reimbursement for their services from third party insurance payers.”

Ultimately, the physical therapy community is committed to health care provided by health care practitioners within their scope of education and training. We support regulation of allied health professionals’ scope of practice based on a national, standardized training curriculum to ensure that the consumers are receiving appropriate and safe care.

I can be reached at 382-2655 if you have any questions. Thank you for the opportunity to testify.



OCCUPATIONAL THERAPY ASSOCIATION OF HAWAII

1360 S. Beretania St., Suite 301, Honolulu, Hawaii 96814

Testimony by:

Avis Sakata, OTR

SB 155sd1, Athletic Trainers

Senate WAM Hearing – Thurs. Feb. 24, 2011

Room 211 – 9:00 am

Position: Support Intent, Clarification Requested

Chair Ige, and Members of the Senate WAM Committee:

I am Avis Sakata, OTR and president of the Occupational Therapy Association of Hawaii, (OTAH), which represents 507 occupational therapists (OTs) licensed in Hawaii. OT's work in many settings throughout the State, including hospitals, schools, prisons, skilled nursing to private facilities and community-based programs.

Occupational Therapy is a science driven, evidenced-based profession that enables people of all ages, from infants to the elderly, to live life to its fullest by helping them promote health and prevent or live better with illness, injury or disability. Occupational Therapists are recognized members of the Healthcare Rehabilitation team which is comprised also of physicians, nurses, physical therapists, speech therapists, social workers and others. As a healthcare provider, OTs provide, but are not limited to: 1) assessment and evaluation of our patients/clients needs and development of an appropriate treatment plan, 2) interventions focused on daily living skills (including self-care), work readiness, play or educational performance skills, 3) and interventions that include sensorimotor, neuromuscular functioning, cognitive or psychosocial components.

OTAH supports the intent of this bill that would provide consumer protection from unqualified practitioners and protects qualified practitioners' rights to provide services. We agree that there is the potential for athletic trainers who have been censored in other states to practice in Hawaii and in the worst case scenario, an individual could set up his/her own practice and state that they provide athletic trainer services when in fact he/she may not have the professional qualifications which would definitely lead to consumer harm.

OTAH appreciates the SD1 inclusion of definitions for "athlete" and "athletic injury" and believes that these definitions clearly state that the specific population that benefits from the existing education and training requirements of certified and registered athletic trainers will be assured of appropriate treatment.

Further, much appreciation is expressed for the language on page 4, lines 12-15, which provides clarity that the practice of athletic training does not include the provision of occupational therapy services as defined in section 457G-1 or physical therapy or physical therapy services as defined in 461J-1.

However, clarification is requested when comparing this section with:

Pg. 7, lines 9-13, (Registration required, exemptions.): "(6) An individual who possess a valid license issued under chapter 457G or 461J who, when acting within the scope of practice allowable under the individual's license, performs the same or similar function as an individual registered pursuant to this chapter."

OTAH strongly supports Pg. 4, lines 12-15 which delineates the separate practices of athletic trainers from occupational therapists. Clarification is requested about the intent or purpose of page 7, lines 9-13. It appears to contradict the clear statement of separate practices expressed in lines 12-15, page 4.

I can be reached at 522-4602 if further information is needed. Thank you for the opportunity to submit testimony.

Testimony to the Senate Ways and Means Committee

On SB 155 SD 1 Relating to Athletic Trainers

Position: Strongly Support

Chair Ige and Members of the Committee,

The Hawaii Athletic Trainers Association is the professional membership association for Certified Athletic Trainers in our state. Certified Athletic Trainers are health care providers who specialize in the prevention, assessment, treatment and rehabilitation of injuries and illnesses. The University of Hawaii-Manoa offers a graduate entry level degree in Athletic Training. Athletic Trainers are employed in all of Hawaii's public schools, some private schools, colleges, Universities, hospitals, physician offices, clinics, and by the military. Hawaii is considered a leader in providing healthcare at the Secondary School level as the legislature provided funds to place a certified athletic trainer in all of Hawaii's public schools.

The Hawaii Athletic Trainers Association strongly supports SB 155 SD1. Hawaii is one of only three states who do not currently regulate the profession of athletic training and we believe it is necessary to safeguard the public. Our association has tried to be proactive in this endeavor. One of the domains of our profession is "prevention" of injury, our profession understands that the best way to treat an injury is to prevent it from ever occurring. We feel the same way about preventing harm to the public. There have been near misses and close calls. Some schools have hired unqualified personnel to serve as athletic trainers. An individual lied to his employer about being certified when he was not. An individual began working in Hawaii when he was under federal investigation in another state. Although most employers do a background check and verify certification status for initial hiring, not one employer in the state verifies that an athletic trainer remains certified and in good standing. Therefore, if someone had been disciplined for an ethical violation or if someone had their certification revoked the employer would never know.

The Board of Certification Inc. reports that over the past 5 years they have issued 960 disciplinary actions to athletic trainers across the county. About half of these were for athletic trainers who did not report continuing education within required timeframes and guidelines. The other half were for such things as irregularities in certification exams and exam applications, fraud, conviction of a felony or misdemeanor including DUI's, child pornography, engaging in sexual relationships with minors, insurance fraud, leaving the scene of an accident, and vehicular homicide. It is inevitable that Hawaii will become a dumping ground for those who have been disciplined in other states. We do not want to wait until a Hawaii patient, whether it be a student athlete, recreational, or professional athlete is harmed to enact legislation.

We are in full support of the changes made in Senate Draft 1 and feel that they adequately address concerns raised by other groups. We understand that all costs involved in enacting this legislation will be provided by the registration fees and that there would be no cost to the State of Hawaii. What we seek in a bill is title protection, a scope of practice, and the ability for the state to levy sanctions on those who attempt to practice without meeting minimum competency. That is what this bill provides, we urge you to pass it.

Thank you for the opportunity to submit comments on this measure.

Cindy Clivio and Darryl Funai

On behalf of the Hawaii Athletic Trainers' Association